

**Pringle v AC Bodyworks & Sons, LLC**

2018 NY Slip Op 34015(U)

October 18, 2018

Supreme Court, Albany County

Docket Number: 900730/2015

Judge: Michael H. Melkonian

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

VANESSA PRINGLE and DOROTHY L. EARLE, as  
Administrators of the goods, chattels and credits which  
were of JOHN LEE DEAN, Deceased,

Plaintiffs,

**DECISION  
AND  
ORDER**

-against-

AC BODYWORKS & SONS, LLC, NATIONAL  
AUTOMOTIVE PARTS ASSOCIATION, INC.  
(NAPA), SCHENECTADY UNITPARTS, INC., d/b/a  
NAPA, SCHENECTADY TRUCK & AUTO SUPPLY,  
INC., d/b/a NAPA and FORD MOTOR COMPANY, A  
DELAWARE CORPORATION,

Defendants.

(Supreme Court, Albany County, Motion Term, August 24, 2018)  
Index Nos. 15-900730  
(RJI No. 01-15-118929)

(Acting Justice Michael H. Melkonian, Presiding)

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MELKONIAN, J.:

In this action, *inter alia*, to recover damages for conscious pain and suffering and wrongful death, etc., defendants Schenectady Unit Parts, Inc. d/b/a NAPA ("NAPA") and Ford Motor Company ("Ford") (collectively referred to herein as "defendants") move for an order compelling plaintiffs to comply with discovery demands relating to records pertaining to loss of earnings or other economic loss. Plaintiffs, in turn, move for an order compelling defendant AC Bodyworks & Sons, LLC's (the "LLC") and AC Bodyworks & Sons, Inc. to produce IRS tax form 941 information and payroll records for the years 2013 and 2014.

Plaintiffs' decedent, John Lee Dean ("decedent" or "Mr. Dean"), was employed as an "auto detailer." On March 10, 2014, Mr. Dean sustained fatal injuries when the unmanned 2002 Ford flatbed truck that he was washing spontaneously moved and crushed him. Plaintiffs, as administrators of Mr. Dean's estate, subsequently commenced

this action against defendants sounding in, *inter alia*, wrongful death and pain and suffering on behalf of decedent's beneficiaries.

Defendants have made discovery requests for decedent's income tax returns and the tax returns for decedent's estate. Defendants state, in sum and substance, that insofar as plaintiffs have asserted a wrongful death cause of action, they are entitled to discovery of records supporting this claim. Plaintiffs have failed to produce said records and have failed to provide defendants with authorizations which are in compliance with the rules and regulations of the IRS in order to permit defendants to obtain these records directly from the IRS. In opposition to defendants' motion, plaintiffs do not seem to dispute the relevancy of the requested materials, or otherwise assert any applicable privilege. Rather, they state in conclusory fashion that decedent earned cash, did not earn enough to file income tax records, paid child support in cash and that the calculation of decedent's earnings can be accomplished with the testimony of witnesses at trial.

CPLR § 3101(a) states that "there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." Furthermore, disclosure requirements are liberally construed (see, Allen v Crowell-Collier Publ. Co., 21 N.Y.2d 403 [1968]; Jordan v Blue Circle Atlantic Inc., 296 AD2d 752 [3<sup>rd</sup> Dept. 2002]), and the court is afforded discretion as to supervising and determining the scope of discovery (see, Marten v Eden Park Health Services, Inc., 250 AD2d 44 [3<sup>rd</sup> Dept. 1998]; Jordan v Blue Circle Atlantic Inc., *supra*). The test used to determine what is discoverable is one of "usefulness and reason" (Allen v Crowell-Collier Publ. Co., *supra*, at 406).

Since an action for wrongful death and specifically this action seeks damages of a pecuniary nature, plaintiffs have waived any claim of privacy or privilege with respect to the financial affairs of the decedent and thus defendants are entitled to discovery of all matters pertaining to economic loss, including decedent's income tax returns and tax returns of his estate (Scalone v Phelps Memorial Hospital Center, 184 AD2d 65, 75 [2<sup>nd</sup> Dept.1992]).

Based on the foregoing, plaintiffs are directed to provide defendants with a copy of the tax returns in question for discovery and inspection within 20 days of the date of this Decision and Order with Notice of Entry. To the extent plaintiffs are not in possession of such records, they shall furnish an appropriate authorization to the Internal Revenue Service to transmit to defendants' attorneys a certified copy of such return(s).

The Court turns next to plaintiffs' motion which is to compel the LLC and AC Bodyworks & Sons, Inc. to produce IRS tax form 941 and payroll records for the years 2013 and 2014. Plaintiffs allege that this documentation will be the "best source" of the names of employees and the employment status of those employees. Plaintiffs allege that there is a question whether the LLC or "AC Body Works & Sons, Inc." owned the vehicle that struck and killed decedent and also which entity employed the auto mechanics who performed mechanical work on said vehicle.

It is well settled that courts are vested with broad discretion to oversee disclosure and "determine what is 'material and necessary'" (Murphy v Hamilton, 90 AD3d 1294, 1295 [3<sup>rd</sup> Dept. 2011], quoting Mora v RGB, Inc., 17 AD3d 849, 851 [3<sup>rd</sup> Dept. 2005]; see, CPLR § 3101[a]).

As to the “payroll records” for the years 2013 and 2014, inasmuch as these records are relevant to the case at bar, and since this demand is not unduly burdensome, plaintiffs’ motion is granted insofar as it demands the production of these documents.

Because of their “confidential and private nature” (Roth v American Colonial Ins. Co., 159 AD2d 370), disclosure of tax returns is disfavored, and plaintiffs are required to establish that the information contained in the returns they seek “is indispensable to this litigation and unavailable from other sources” (Briton v Knott Hotels Corp., 111 AD2d 62, 63; see, also, Haenel v November and November, 172 AD2d 182). Consistent with this authority, the party seeking to compel production of a tax return must identify the particular information the return will contain and its relevance, explain why other possible sources of the information sought are inaccessible or likely to be unproductive and limit examination of the return to relevant material through redaction of extraneous information (6 Weinstein–Korn–Miller, N.Y. Civ Prac ¶ 3101.10a).

Here, the record is insufficient to support the production of the tax records of either the LLC or non-party AC Bodyworks & Sons, Inc. Plaintiffs simply make the argument that the corporate returns are necessary because “the requested filed IRS 941 will be the best source of that employee’s employment status.” However, plaintiffs have deposed Brian Caprara who testified that he is the owner of AC Bodyworks & Sons. He testified that the business was a limited liability corporation (“LLC”) until the LLC was dissolved on September 17, 2012. He testified that the business became a corporation on September 28, 2012. The “Articles of Dissolution” and the “Certificate of Incorporation,” which are attached to counsel’s affirmation as Exhibit I and Exhibit J, respectively, support these assertions. He testified that all assets of the LLC, including

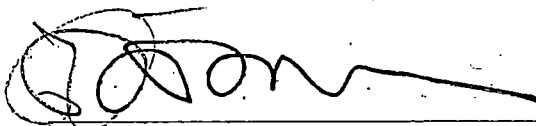
vehicles, were transferred into the corporation when the LLC was dissolved. Prior to making this motion, plaintiffs sought discovery of the tax returns of AC BODYWORKS, alleging those records were necessary in order to determine which entity, the LLC or the INC., existed at the time the accident occurred. The LLC opposed this demand and, as a result, a Court conference was held December 5, 2017. The Court determined that AC BODYWORKS would produce a redacted copy of the first page of tax returns, as that would show the identity of the entity. Copies of the first page of tax returns for the years 2013 and 2014 were provided to the plaintiffs. Plaintiffs failed to state why the aforementioned was insufficient to determine the entity which employed the auto mechanics who allegedly worked on the vehicle that struck decedent and which entity owned the vehicle in question.

Inasmuch as plaintiffs have made an insufficient showing, at this time, of their inability to obtain the information sought from the tax records from other sources, plaintiffs' application to compel defendants to comply with discovery demands is hereby denied in part and granted in part to the extent delineated above.

This constitutes the Decision and Order of the Court. This Decision and Order is returned to the attorneys for the defendants. All other papers are delivered to the Supreme Court Clerk for transmission to the County Clerk. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of this rule with regard to filing, entry and Notice of Entry. Memorandum constitutes the Decision and Order of the Court.

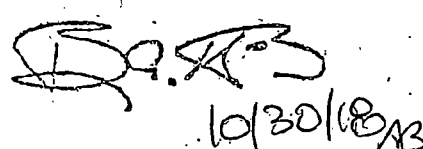
SO ORDERED.  
ENTER.

Dated: Troy, New York  
October 18, 2018



MICHAEL H. MELKONIAN  
Acting Supreme Court Justice

Papers Considered:

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- (1) Notice of Motion dated May 25, 2018;
  - (2) Affirmation of Sean A. Tomko, Esq., dated May 25, 2018, with exhibits annexed;
  - (3) Notice of Motion dated June 25, 2018;
  - (4) Affirmation of Brian P. Crosby, Esq., dated June 25, 2018, with exhibits annexed;
  - (5) Notice of Motion dated July 24, 2018;
  - (6) Affirmation of Hugh W. Campbell, Esq., dated July 24, 2018, with exhibits annexed;
  - (7) Affirmation of Brian P. Crosby, Esq., dated August 22, 2018, with exhibits annexed;
  - (8) Affirmation of John B. Paniccia, Esq., dated August 15, 2018, with exhibits annexed;
  - (9) Memorandum of Law dated August 15, 2018;
  - (10) Affirmation of Hugh W. Campbell, Esq., undated, with exhibits annexed;
  - (11) Affirmation of Hugh W. Campbell, Esq., undated, with exhibits annexed.